

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.233 of 2014**

Arising Out of PS. Case No.-259 Year-1999 Thana- AMARPUR District- Banka

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Sikander Das S/o Late Musahru Das Resident of Village Kaushalpur, P.S.
Amarpur, District Banka.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Jha, Advocate
Mr. Kumar Kamal Nayan, Advocate
For the Respondent/s : Mr. Abhay Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 10-03-2026

Heard Mr. Sanjay Kumar Jha, along with Mr.
Kumar Kamal Nayan, learned counsels appearing on behalf of
the Appellant and Mr. Abhay Kumar, learned APP for the State.

2. The present appeal has been filed under Sections
374 (2) and 389(1) of the Code of Criminal Procedure
challenging the judgment of conviction and order of sentence
dated 22.04.2014 passed by the learned First Additional
Sessions Judge, Banka arising out of Amarpur P.S. Case No. 259
of 1999 whereby and whereunder the sole accused has been
convicted for the offence punishable under Section 324 of the
Indian Penal Code and has been sentenced to undergo Simple



Imprisonment for three years.

3. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present appeal before this Court. The appellant has assailed the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellant despite the existence of serious contradictions and deficiencies in the prosecution case.

4. That the prosecution story, in brief, is that on the written complaint of the informant, namely Prakash Das, stating therein that four days prior to the occurrence, accused Sikandar Das came to the house of the informant and demanded money from the father of the informant for purchasing liquor, and when the money was not paid, Sikandar Das threatened him with dire consequences. On 05.02.1999 some altercation took place between the wife of the informant, namely Radha Devi, and Sikandar Das with regard to the purchase of "souda", as the wife of the informant runs a general store shop. When the informant objected to the same, Sikandar Das and Narayan Das abused him and assaulted him, and thereafter Sikandar Das gave a blow



with an axe on the head of the informant, causing injuries to him. Thereafter, both the accused persons fled away from the place of occurrence.

5. After investigation, learned Chief Judicial Magistrate, Banka took cognizance of the offence and by order dated 05.04.2006 the learned Chief Judicial Magistrate, Banka committed the case to the Court of Sessions and the learned Trial Court framed charges against the appellant under Sections 307, 323, 341 of the Indian Penal Code. The learned Trial Court convicted the appellant by the judgment dated 22.04.2014.

6. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment of conviction and order of sentence passed by the learned Trial Court is unsustainable in the eye of law, as the same is based on inconsistent and unreliable evidence. It is contended that there are material contradictions between the ocular testimony of the prosecution witnesses and the medical evidence on record. Learned counsel draws the attention of this Court to paragraph 6 of the testimony of P.W.1, wherein he has stated that the informant sustained injury by the sharp edge of an axe. In paragraph 8 of his deposition, the witness stated that the assault was made twice with the sharp edge of the axe, and in paragraph



9 of the cross-examination he further stated that on both occasions the entire sharp edge of the axe struck the head of the informant. However, the injury report shows that both the injuries found on the person of the informant were lacerated wounds. P.W.6, Dr. Sirv Narayan Kanth, who examined the injured, has also stated that both the injuries were caused by a hard and blunt substance. It is therefore submitted that the medical evidence is inconsistent with the ocular testimony of P.W.1, as an injury caused by the sharp edge of an axe would ordinarily result in an incised wound and not a lacerated wound.

7. Learned counsel further submitted that in paragraph 10 of his deposition P.W.1 has stated that after the informant fell down, no one assaulted him with a lathi. In paragraph 11 of the cross-examination, the witness has stated that prior to the alleged assault there was “dhakka-mukki” (scuffle) and that blood had fallen on the ground, however, the Investigating Officer has not been examined in the present case. Learned counsel has also referred to paragraph 12 of the testimony of P.W.1, wherein the witness stated that when the informant was being taken to the hospital there was hulla (commotion), and upon hearing the same he and his wife reached the place of occurrence. In paragraph 14 of the cross-



examination, the witness denied the suggestion that he had not stated before the police about the occurrence of dhakka-mukki. However, in the absence of the examination of the Investigating Officer, the defence has been deprived of the opportunity to confront the witness with his previous statement recorded during investigation, and therefore the benefit of such omission ought to go in favour of the appellants.

ARGUMENT ON BEHALF OF THE STATE

8. *Per contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences as the offences alleged against the appellants appears to be serious in nature and also constitutes cognizable offence.

ANALYSIS AND CONCLUSION

9. Heard the parties.

10. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

11. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment of Conviction dated 22.04.2014 for the offences under



Section 324 of the IPC.

12. During the trial, the prosecution has examined altogether seven witnesses, namely:

- (i) (P.W.-1),- Bhagirath Das
- (ii) (P.W.-2),- Prakash Das/Informant
- (iii) (P.W.-3),- Ashok Yadav
- (iv) (P.W.-4/ , - Ramchee Das
- (v) (P.W.-5),- Shiro Das
- (vi) (P.W.-6),- Dr. Shiv Narayan Kanth
- (vii) (P.W.-7),- Dr. Chandramouli Upadhaya.

13. The prosecution has also relied upon following documents exhibited during the course of trial:-

- (i) Signature of the informant on the written application.(Exhibit-1),
- (ii) Injury report of the informant (Exhibit-2),
- (iii) Photo copy of the supplementary injury report of the informant (Exhibit-2/1),
- (iv) Identification of the photo copy of discharge ticket of the informant (Exhibit-x)
- (v) Identification of the photo copy of C.T. Scan Report of the informant (Exhibit-x/1)



14. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

15. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

16. It would be appropriate to reproduce the provisions of Section 324 of the IPC for the sake of convenience and better understanding of the facts, which are as under:

“324. Voluntarily causing hurt by dangerous weapons or means.—

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

17. Based on the analysis of the evidences and the facts and law, in the present case, it appears that several prosecution witnesses have not supported the prosecution case



and have been declared hostile. The medical evidence also does not support the prosecution case as the doctor PW 6 did not find any injury on the informant caused by hard and blunt substance.

18. Upon a careful re-appraisal of the evidence available on record, I find that the medical evidence tendered by PW-6, the Medical Officer, assumes considerable significance. PW-6 has categorically stated in the medical report as well as during deposition that he did not find any injury on the body of the informant. The evidence of PW-6, therefore, does not lend corroboration to the prosecution case creating a serious doubt about the occurrence.

19. It is well settled that the Court is required to examine the prosecutrix's testimony with greater caution. The inconsistencies between the ocular and medical evidence create uncertainty which goes to the root of the prosecution case. In *Sadashiv Ramrao Hadbe v. State of Maharashtra*, reported in (2006) 10 SCC 92, the Hon'ble Supreme Court held that when the version of the prosecutrix is not of sterling quality and is inconsistent with the medical evidence, and when the surrounding circumstances render the prosecution story doubtful, the accused is entitled to the benefit of doubt. The Court further held that conviction cannot be sustained where the



prosecution has failed to prove its case beyond reasonable doubt.

20. Applying the aforesaid legal principles to the facts and the evidences of the present case, in light of the conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, results in material inconsistencies and cannot be relied upon. The unequivocal medical evidence of PW-6 indicating absence of injuries on the body of the informant caused by hard and blunt substance, also don't corroborate with the versions of the prosecutrix, I am of the view that the prosecution has miserably failed to establish the charge beyond reasonable doubt. Consequently, the appellant is entitled to the benefit of doubt and the conviction of the appellant cannot be sustained.

21. In view of aforesaid discussions of factual and legal aspects, the present appeal is allowed.

22. The impugned judgment of conviction and order of sentence dated 22.04.2014 passed by the learned First Additional Sessions Judge, Banka arising out of Amarpur P.S. Case No. 259 of 1999 is hereby set aside. Consequently, the above-named appellant/accused is acquitted from all the charges levelled against him. Since the appellant is on bail, as such, he is



discharged from the liability of his bail bond. The fine deposited
by the appellant, if any, shall be refunded to him.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.03.2026
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